IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

MFA.No. 1207 of 2000()

OPMV.372/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANT: PETITIONER

JOHNA PAUL, S/O.N.L.PAUL,
NILAYATTINGAL HOUSE,
UDAYA NAGAR, MAILIPPADAM,
THRISSUR.

BY ADV. SRI.P.VIJAYA BHANU
SMT.MINI JOHN PAREMALIL

RESPONDENTS: RESPONDENTS
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1. **THE MANAGING DIRECTOR,**
   M/S. HABEEB OIL MILLS LTD.,
   T.B.ROAD, BANGALORE.

2. **MOHAMMED ALI, S/O.ABDUL WAHAB,**
   HALABI BLOCK,
   MANDYA DISTRICT KARNATAKA.

3. **NATIONAL INSURANCE CO.LTD.,**
   BRANCH MANDYA, KARNATAKA.

BY ADV. SRI.MATHEWS JACOB(SR),SC INSURANCE,(B/0)

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.1207 OF 2000

Dated 10th July, 2007

JUDGMENT

Koshy,J.

Appellant in this case was the petitioner in O.P. (M.V)No.372 of 1995 before the Motor Accidents Claims Tribunal, Thrissur. He was a Pre-degree student aged 20 at the time of the accident. The accident occurred when the car driven by him collided with a lorry insured by the third respondent insurance company. As a result of the accident, he sustained serious injuries. He filed an application for compensation of Rs.4,00,000/=. His father who was along with him in the car also filed claim petition. He did not sustain any serious injuries. As far as the appellant is concerned, as it was found that the accident occurred due to his own negligence, no compensation was awarded under Section 166 of the Motor Vehicles Act, but, compensation under Section 140 of the Motor Vehicles Act was granted. Before the court he as well as PW2 deposed that the accident occurred due to the negligence of the driver of the lorry. However, Tribunal has considered the documentary evidence and observed as follows:

> "Ext.B1 is the FIR in Crime No.172/94 of the Peechi Police Station. The crime was registered on the basis of the FI

statement given by the petitioner in O.P.371/95 from Aswini Hospital, Thrissur where he was admitted for treatment after the accident. It was stated by him before the police that the accident had occurred at Kuthiran. The car which was proceeding from east to west was going down the gradian and the lorry which was coming from the opposite side was coming up. What was stated by him before the police is that as soon as the lorry passed by, the car went and hit the right back wheel of the lorry. The relevant portion of the statement reads as follows:
"

Since the lorry was coming up, it cannot be said that he was at an alarming speed. There is positive statement of the petitioner in O.P.371/95 before the police that the car was at a relatively good speed. The FI statement given by the petitioner in O.P.371/95 before the police is a detailed statement and I don't think the police officer who recorded that statement had imagined those details. Ext.B2 is the copy of the scene mahazar. But the scene mahazar is not helpful in proving the exact spot of accident. But the FI statement itself is sufficient to show that the accident had occurred due to the negligence of the petitioner in O.P.372/95. The car was at a good speed and it was going down the gradian. Evidently, the petitioner in O.P.372/95 who was driving the car might have lost control over the vehicle while coming down. Ext.b3 is the A.M.V.I. report pertaining to the

> car involved in the accident which would go to show that it was the front side of the car which had hit the lorry. Ext.B4 is the copy of the A.M.V.I. report pertaining to the lorry which would go to show that the car had hit the rear mudguard on the right side. So, these documents would also probabilise the story in the FI statement. So, the materials now placed on record are sufficient to take me to the conclusion that the accident had occurred only because of the rash and negligent driving of the car by the petitioner in O.P.372/95. My conclusion is fortified by Ext.B5, which is the copy of the police charge filed after detailed investigation. Issue answered accordingly."

We agree with the above finding. We have also gone through the FI Statement given by the father of the appellant who was also a passenger in the car and his statement shows that car was coming with excessive speed and that while the car was passing the lorry, it hit at the rear right side of the lorry. His statement is supported by the A.M.V.I. report of the lorry as well as car and finding of the Tribunal on negligence is fully justified. In the above circumstances, we see no ground to interfere with the award.

The appeal is dismissed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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